

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into this 20th day of August, 2002, between the Department of Housing and Urban Development ("HUD") and Gracy Title Company. This Settlement Agreement applies to Gracy Title Company, its officers, directors, employees, successors, and assignees, and to all subsidiaries of Gracy Title Company and their officers, directors, employees, successors, and assignees ("Gracy"). HUD and Gracy together shall be referred to herein as the "Parties."

Whereas, Section 8(a) of the Real Estate Settlement Procedures Act ("RESPA"), 12 U.S.C. § 2607(a), requires that "[n]o person shall give and no person shall accept any fee, kickback, or thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or a part of a real estate settlement service involving a federally related mortgage loan shall be referred to any person.";

Whereas, HUD instituted an inquiry and investigation into certain practices of Gracy and other title companies relating to their provision of "virtual tours" of residential real property offered for sale in Texas by real estate brokers or real estate agents at no cost to the brokers or agents for the period commencing on May 1, 2000, through and including the date of this agreement;

Whereas, the term "virtual tour" refers to the internet-based service by which any person can access a website that displays photographs and information concerning residential real property offered for sale and can manipulate the site to obtain a panoramic view of the interior and/or exterior of the property;

Whereas, Gracy has provided HUD with information on both the volume of virtual tours Gracy provided and the costs associated with providing virtual tours;

Whereas, as a result of its inquiry and investigation, HUD asserts that by providing virtual tours, Gracy has provided a "thing of value" in exchange for the referral of business in violation of Section 8(a) of RESPA;

Whereas, the Parties desire to resolve any and all RESPA issues arising from the production of "virtual tours";

Whereas, this Settlement Agreement shall not constitute an admission of liability or fault on the part of Gracy;

Whereas, the Parties desire to avoid further expenses and proceedings, and to reach a mutually satisfactory resolution of this matter by entering into this Settlement Agreement;

Whereas, this Settlement Agreement covers only those practices of Gracy identified herein, known to and alleged by HUD regarding the provision of virtual tours in the State of Texas;

Whereas, by entering into this Settlement Agreement, HUD does not approve or authorize the use of "virtual tours" or any ancillary business;

Whereas, Gracy denies that its provision of "virtual tours" violates Section 8(a) of RESPA;

Whereas, the terms set forth in this Settlement Agreement are an appropriate disposition of this matter and in the public interest;

NOW, THEREFORE, in consideration of the mutual promises and representations set forth herein, and in further consideration for HUD's reliance upon the substantial accuracy and good faith of Gracy's representations and submissions concerning the number of virtual tours provided by Gracy and the cost to Gracy of providing such virtual tours, the Parties hereby agree and intend to be legally bound by the following:

(1) As of the date of execution of this Settlement Agreement, in connection with any provision of a virtual tour by Gracy with respect to residential real property located within the state of Texas, Gracy will comply with Section 8 of RESPA and with all of the provisions of Paragraph (2) of this Settlement Agreement.

(2) Whenever Gracy provides a virtual tour to or for the benefit of any person in a position to refer title insurance business with respect to residential real property located within the State of Texas, Gracy will provide such virtual tour only in accordance with the provisions of Paragraph (2) of this Settlement Agreement.

(A) Before providing a virtual tour, Gracy shall charge and collect a fee for any virtual tour that it provides to a person in a position to refer residential title insurance business. Gracy agrees not to provide a virtual tour for free. The fee shall not be less than the actual cost to Gracy of providing the virtual tour. Any such fee collected that equals or exceeds the actual cost of the virtual tour to Gracy shall be deemed reasonable.

(B) The fees charged and collected for virtual tours shall be uniform for all persons charged for virtual tours of a similar kind and quality, and the virtual tour service shall be available, to the extent allowable by law, to any person who wishes to avail himself or herself of the service.

(C) Gracy shall notify in writing or by electronic mail, each and every real estate broker and real estate agent who requests the provision of a virtual tour that there is no agreement, understanding or requirement to refer business to Gracy, if Gracy provides such a virtual tour.

(D) Gracy will not refuse to provide a virtual tour to any person on the basis that such person does not refer business to Gracy.

(3) Within twenty (20) business days of the execution of this Settlement Agreement, Gracy shall make a payment of \$9,850.00, payable to the United States Treasury, and delivered to counsel for HUD.

(4) Gracy waives, releases, and remits any and all claims that it may have, directly or indirectly, against HUD or HUD employees whether known or unknown, with respect to this matter. HUD waives, releases, and remits any and all claims that it may have at the time of execution of this Settlement Agreement and that might be made with regard to the provision of virtual tours against Gracy. HUD's waiver is based on its reliance upon the substantial accuracy and good faith of Gracy's answers and representations made during HUD's investigation.

(5) Based on Gracy's compliance with the terms of this Settlement Agreement, HUD will terminate its related investigation as of the date of this agreement and take no further enforcement action against Gracy under Section 8 of RESPA as to this matter.

(6) HUD intends to apply and interpret the principles of Paragraph (2) of this Settlement Agreement and Section 8 of RESPA uniformly for all title companies providing title services in the State of Texas.

(7) Each of the Parties shall bear its own attorneys' fees and costs.

(8) Gracy agrees to cooperate with HUD in their ongoing investigation of violations of RESPA with regard to virtual tours in the state of Texas by providing such information in Gracy's custody, possession or control as HUD may reasonably request in the course of such investigation and by making Gracy personnel available for debriefing and testimony, upon reasonable notice and reasonable terms and conditions.

(9) This Settlement Agreement is a binding and final agreement that applies to and binds each of the persons or entities identified in the first paragraph of this Settlement Agreement. Provided, however, that Gracy shall be entitled to relief from the provisions of Paragraph 2 in order to engage in conduct permitted by RESPA in the event that section 8 of RESPA is amended or in the event that the provisions of Regulation X interpreting and applying section 8 of RESPA are amended.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first stated above.


GRACY TITLE COMPANY

U.S. DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT

By: Larry Molinare

By: John C. Weicher

Signature: 

Signature: 

Title: Chairman and Chief Executive Officer

Assistant Secretary for
Housing-Federal Housing
Title: Commissioner